IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 700 (S/S) of 2006

Birbal Singh Chauhan,
Aged about 52 years,
Son of late Sri L.S. Chauhan,
R/o Main Road, Babugarh,
Vikas Nagar,
Dehradun. **…… Petitioner**

V e r s u s

1. State of Uttaranchal, through Secretary, Agriculture, Government of Uttaranchal, at Dehradun.
2. Director of Agriculture, Uttaranchal, at Dehradun.
3. Assistant Director, Water Shed Management, Vikas Nagar, at Dak Paththar, Dehradun.

……Respondents

Hon'ble M.M. Ghildiyal, J.

1. Heard Sri B.D. Upadhyay, learned counsel for the petitioner and learned standing counsel for the State of Uttaranchal on behalf of respondents.

2. By means of this writ petition, the petitioner has prayed for the following reliefs:

   (a) issue a writ, order or direction in the nature of Certiorari to call for the record and quash the order dated 12.04.2006 send through the registered letter dated 25.04.2006 and received by the petitioner on 28.04.2006 contained in Annexure No. 11 to the writ petition.

   (b) issue a writ, order or direction in the nature of Mandamus directing the respondent no. 3 to relieve the petitioner from Vikasnagar in pursuance of the modified orders dated 02.06.2005

and 30.11.2005 passed by respondent no. 2 and pay his entire salary with interest.

(c) *Issue any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstance of the case.*

(d) *Award the costs of the petition to the petitioner.*

3. On 24.05.2006, time was granted to learned standing counsel for the respondents to file counter affidavit. However, till date no counter affidavit has been filed.

4. The submission of the learned counsel for the petitioner is that petitioner was working as Assistant Manager, Watershed Management, Vikas Nagar, Dak Paththar, Dehradun. On 02.03.2005, Director of Agriculture, Uttaranchal i.e. respondent no. 2 promoted and posted the petitioner to the post of Deputy Manager, Watershed Management at Bageshwar. An accident took place in which two sons of the petitioner were died. The wife of the petitioner has submitted application on 25.04.2005 requesting the respondent no. 2 to post his husband at nearby station in view of the family circumstances.

5. The Director of Agriculture, consequently, by order dated 02.06.2005 modified earlier order dated 02.03.2005 and posted the petitioner as Assistant Development Officer Grade – II, at Dehradun and further directed the respondent no. 3 to relieve the petitioner so that he may join at Dehradun.

Respondent no. 2 again modified the order of transfer and promotion dated 30.11.2005 and posted the petitioner as Deputy Manager, Watershed Management, at Roorkee.

6. Petitioner was not permitted to join at Roorkee as he was not having relieving order, consequently, petitioner approached respondent no. 3 to relieve the petitioner from Bageshwar, who did not pass order of relieving.

7. Aggrieved with the inaction of respondent no. 3 petitioner preferred a writ petition no. 201 (SS) of 2006. The said writ petition was disposed of by this court on 25.02.2006 with a direction to respondent no. 3 to pass appropriate order in connection with the relieving of petitioner and petitioner was also directed to approach respondent no. 3 by filing fresh representation.

8. Petitioner filed representation before respondent no. 3 and respondent no. 3 has rejected the representation of the petitioner vide order dated 12.04.2006, which is order impugned in the present writ petition.

9. In the order dated 12.04.2006 respondent no. 3 while rejecting the application has taken stand that since the petitioner has already been relieved on 25.04.2005 from Vikas Nagar, Dehradun to Bageshwar in pursuance to the promotion order dated 02.03.2005 passed by respondent no. 2 and there is no occasion to pass fresh order for relieving.

10. The submission of the petitioner is that he was relieved exparte. In any case, it is not disputed petitioner was relieved by respondent no. 3 on 25.04.2005. It is also not disputed that earlier transfer order has been modified twice by respondent no. 2, who is the highest authority and by the latest order petitioner has been posted as Deputy Manager, Watershed Management at Roorkee. He has to join at Roorkee and without obtaining relieving certificate he cannot be permitted to join at Roorkee by the Authority. Stand of respondent no. 3, if it is correct, respondent no. 3 cannot be forced to pass fresh order for relieving of the petitioner, in case, he has already been relieved vide order dated 25.04.2005.

11. In view of the above circumstances, I direct the respondent no. 2 to pass appropriate order for relieving of petitioner which may permit the petitioner to join at Roorkee and shall ensure that the petitioner is permitted to join at new place of posting i.e. at Roorkee within a period of two weeks from the date of production of certified copy of this order provided the petitioner present himself to join at Roorkee.

12. With this direction the writ petition is finally disposed of. No order as costs.

(M.M. Ghildiyal, J)

July 11, 2006
SKSharma